

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JESSE BLACKSTOCK,

Plaintiff,

vs.

APRIL HART, CPL. MORSE, SGT.
RYINSBORFF, ROBERT MADSEN,
SCOTT FRANKS, RN D. MARTINEZ,
and WAYNE CHANDLER,

Defendants.

8:18CV253

**MEMORANDUM
AND ORDER**

This matter is before the court on the Notice of Appeal ([filing no. 12](#)) filed by Petitioner Jesse Blackstock on August 15, 2018. Also before the court is a memorandum from the Clerk of the Court requesting a ruling as to Petitioner's authorization to proceed in forma pauperis on appeal. ([Filing No. 13.](#))

Petitioner has failed to include the \$505.00 appellate filing and docket fees. Petitioner has not previously been granted leave to proceed in forma pauperis in the district court in connection with his § 2254 petition. Thus, [Fed. R. App. P. 24\(a\)\(3\)](#), which continues in forma pauperis status on appeal without further authorization, does not apply. "An appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." [28 U.S.C. § 1915\(a\)\(3\)](#). The court hereby certifies that the appeal filed by Petitioner in this case is frivolous and not taken in good faith for the reason that his habeas petition was dismissed without prejudice because the claims raised in his petition were not properly brought in a habeas corpus action. Petitioner's claims related to his conditions of confinement and are the proper subject of an action brought pursuant to [42 U.S.C. § 1983](#). Since the appeal is not taken in good faith, Petitioner cannot

file an appeal in forma pauperis. *See* [Fed. R. App. P. 24\(a\)\(3\)](#) and [28 U.S.C. § 1915\(a\)\(3\)](#).

IT IS THEREFORE ORDERED that:

1. The court certifies that his appeal is frivolous and not taken in good faith, and Petitioner may not proceed on appeal in forma pauperis.
2. The court will not act on Petitioner's notice of appeal. ([Filing No. 12.](#))
3. The clerk of court is directed to send a copy of Petitioner's notice of appeal and a copy of this Memorandum and Order to the Eighth Circuit Court of Appeals.

Dated this 16th day of August, 2018.

BY THE COURT:

s/ Richard G. Kopf
Senior United States District Judge